

SUPERSEDED

by 10-1-84 Amendments
to § 84308 (Ch. 1681, 1984
Stats ; AB 2992) - "quasi-
judicial" removed from
statute

8 FPFC OPINIONS 1

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)
)
Opinion Requested by:)
Robert D. Curiel)
County Counsel)
Humboldt County)
_____)

No. 83-003
Sept. 7, 1983

BY THE COMMISSION: We have been asked the following question by Robert D. Curiel, County Counsel of Humboldt County:

Are members of the Humboldt County Local Agency Formation Commission ("LAFCO") subject to the provisions of Government Code Section 84308?

More specifically, we have been asked to determine:

(1) Whether the LAFCO is exempt from the provisions of Government Code Section 84308 as a "legislative body;" and

(2) If the LAFCO is not exempt as a legislative body, whether it is a "quasi-judicial" body covered by the section.

CONCLUSION

Under Commission regulations, the LAFCO is not a "legislative body" exempt from Government Code Section 84308. However, because all the LAFCO's activities have been determined by the courts to be quasi-legislative, rather than quasi-judicial, a LAFCO is not a quasi-judicial body covered by Government Code Section 84308.

ANALYSIS

Government Code Section 84308^{1/} (the "Levine Bill") prohibits members of any quasi-judicial agency, other than a

^{1/} All statutory references are to the Government Code unless otherwise stated.

"legislative body," from soliciting or accepting campaign contributions of \$250 or more from persons participating in proceedings involving licenses, permits or other entitlements for use. It also requires disclosure and disqualification in connection with such proceedings by a member of a covered agency, if the member has received campaign contributions of \$250 or more within the past 12 months from any participant in the proceedings. Thus, if the Humboldt County LAFCO is not exempt from Section 84308 as a legislative body, and if it is a quasi-judicial agency, its members are covered by the section whenever the LAFCO acts on licenses, permits or other entitlements for use.

A LAFCO^{2/} is a county regulatory agency whose primary function is to approve or disapprove applications for annexation of territory to local agencies within the county. No annexation or deannexation can be made to a city, no city can be incorporated, and no change can be made to a police, fire, school, sewage, water or other district without first obtaining LAFCO approval. In addition, LAFCOs have oversight and planning functions with respect to future development in their counties.

Every county is required to have a LAFCO. Each LAFCO has five appointed members. Two members must be county supervisors, appointed by the Board of Supervisors. Two members must be city officers, appointed by the city selection committee. One public member is appointed by the other four commission members.

A LAFCO is not a "Legislative Body" Within the Meaning of Section 84308(d).

Section 84308(d) exempts "legislative bodies such as city councils, county boards of supervisors, and the State Legislature" from the coverage of Section 84308. The Commission previously has, by regulation,^{3/} interpreted this to mean that only boards or commissions whose entire membership is directly elected by the voters are exempt from the coverage of Section 84308. Since members of the LAFCO board are appointed, the LAFCO is not a "legislative" body exempt from Section 84308

^{2/} Government Code Sections 54773-54863.

^{3/} 2 Cal. Adm. Code Section 18438.1(a).

under the Commission's regulation.^{4/} See Horwath v. Local Agency Formation Comm. (1983) 143 Cal. App. 3d 177, 191 Cal. Rptr. 593, which refers to a LAFCO as a "quasi-legislative" agency.

An Agency is Covered by Section 84308 When, and Only When, it Engages in the Type of Activities Which are Traditionally Termed "Quasi-Judicial" by the Courts.

Section 84308 applies to "quasi-judicial boards and commissions which act on licenses, permits, or entitlements for use." The term "quasi-judicial board or commission," is not defined by the statute. It is, furthermore, a term which is ordinarily used to describe the functions of an administrative agency, not to describe the agency itself. Some agency functions, because they resemble the adjudicatory functions of courts, are called "quasi-judicial." Quasi-judicial proceedings generally determine the rights of specific parties, or apply existing law to specific situations. Examples of quasi-judicial proceedings include proceedings to issue or revoke licenses, building permits, zoning variances, conditional use permits, parcel and subdivision maps, or coastal development permits. Other agency functions, because they resemble the law-making functions of the State Legislature, are called "quasi-legislative."^{5/} Quasi-legislative proceedings involve adoption of rules of general applicability which apply primarily to future situations. Examples of quasi-legislative proceedings include annexations of territory to a city or district, adoption or amendment of zoning ordinances, adoption of regulations, or

^{4/} In view of our decision, infra, interpreting the term "quasi-judicial board or commission," there is no need for us to reconsider 2 Cal. Adm. Code Section 18438.1(a) in this opinion, and we decline to do so.

^{5/} City of Chula Vista v. Superior Court (1982) 133 Cal. App. 3d 472; Patterson v. Central Coast Regional Comm. (1976) 38 Cal. App. 3d 833, 839-841; Natural Resources Defense Council, Inc. v. Cal. Coastal Zone Conservation Comm. (1976) 57 Cal. App. 3d 76, 83, 129 Cal. Rptr 57; Topanga Ass'n for a Scenic Community v. County of Los Angeles (1974) 11 Cal. 3d 506, 113 Cal. Rptr. 836.

granting of franchises.^{6/} Most government agencies at some time perform quasi-judicial functions, and at others quasi-legislative functions.

Recognizing that most agencies have dual functions, the most logical way to interpret the phrase "quasi-judicial board or commission" in Section 84308 is to say that an agency is a quasi-judicial body when, and only when, it performs traditionally quasi-judicial functions. This interpretation -- an agency is quasi-judicial only when it is acting in a quasi-judicial capacity -- is consistent with the general usage of the term "quasi-judicial." For example, it has been said that a board of supervisors exercising quasi-judicial powers "becomes a quasi-judicial body" for that purpose. DiGenova v. State Board of Education (1955), 45 Cal. 2d 255, 269, 288 P2d 862. In a more recent case, a LAFCO was described as a "quasi-legislative administrative agency" because the functions it performs are solely quasi-legislative. Horwath v. Local Formation Comm., (1983), 143 Cal. App. 3d 177, 183, 191 Cal. Rptr. 593.

Although determining whether a specific agency function is quasi-judicial or quasi-legislative may be difficult in some cases,^{7/} a large number of the most common administrative functions have already been classified by the courts or by the Legislature as either quasi-judicial or quasi-legislative.^{8/} In situations where the courts have not specifically ruled on whether a particular type of action is quasi-judicial or quasi-legislative, one can look at the procedures used in making or reviewing the decision. For example, a procedure conducted under the administrative adjudication provisions of the

^{6/} Arnell Development Co. v. City of Costa Mesa (1980) 28 Cal. 3d 511; Patterson v. Central Coast Regional Comm., supra; Landi v. County of Monterey (1983) 139 Cal. App. 3d 934, 936-937, 189 Cal. Rptr. 55.

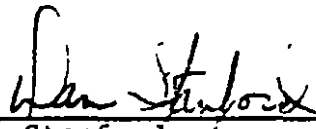
^{7/} "The issue whether a function is legislative or judicial is sufficiently complex to baffle the most sophisticated courts which routinely must deal with the issue." City of Chula Vista v. Superior Court (1982), 133 Cal. App. 3d 472, 486, 183 Cal. Rptr. 909.

^{8/} See footnotes 5 and 6, supra.

Administrative Procedure Act^{9/} is, by definition quasi-judicial. So is any procedure which is reviewable by "administrative mandamus."^{10/} In those cases in which it is unclear whether an action is quasi-legislative or quasi-judicial, the same tests that courts use to determine whether an action is quasi-judicial or quasi-legislative should be applied.

From our ruling^{11/} -- that an agency is "quasi-judicial" under Section 84308 only when it performs a function which would traditionally be classified as quasi-judicial -- it is apparent that LAFCOs are not covered by this section. The courts have consistently ruled that the functions exercised by LAFCOs are quasi-legislative.^{12/} So long as LAFCOs continue to exercise only quasi-legislative functions, they will continue to fall outside the coverage of Section 84308.

Adopted by the Commission on September 7, 1983.
Concurring: Commissioners Conrad, Lemons, Stanford and Ziffren
Dissenting: Commissioner Metzger



Dan Stanford
Chairman

^{9/} Sections 11500, et seq.

^{10/} Code of Civil Procedure Section 1094.5.
Patterson v. Central Coast Regional Comm. (1976) 58 Cal. App. 3d 833, 840, 130 Cal. Rptr. 169.

^{11/} In making this ruling we specifically disapprove our prior regulation, 2 Cal. Adm. Code Section 18438.1(c).

^{12/} Horwath v. LAFCO, supra.